UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NEHEMIAH ROBINSON,
CDCR #J-71342,

Plaintiff,

vs.

T. CATLETT, et al.,

Defendants.

Civil No. 08-0161 H (BLM)

ORDER DISMISSING CASE WITHOUT PREJUDICE FOR FAILING TO PAY FILING FEES PURSUANT TO 28 U.S.C. § 1914(a) AND/OR MOVE TO PROCEED *IN FORMA PAUPERIS* PURSUANT TO 28 U.S.C. § 1915(a)

Nehemiah Robinson ("Plaintiff"), a state prisoner currently incarcerated at Calipatria State Prison located in Calipatria, California, and proceeding pro se, has filed this civil rights action pursuant to 42 U.S.C. § 1983.

I. Failure to Pay Filing Fee or Request IFP Status

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of $350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

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Here, Plaintiff has neither prepaid the $350 filing fee required to commence this action, nor has he submitted a Motion to Proceed IFP. Therefore, this action is subject to immediate dismissal pursuant to 28 U.S.C. § 1914(a).

II. Conclusion and Order

For the reasons set forth above, the Court hereby:

(1) **DISMISSES** this action sua sponte without prejudice for failing to pay the $350 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

(2) **GRANTS** Plaintiff forty five (45) days leave from the date this Order is stamped "Filed" to: (a) prepay the entire $350 civil filing fee in full; ***or*** (b) complete and file a Motion to proceed IFP which includes a certified copy of his trust account statement for the 6-month period preceding the filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2).

IT IS FURTHER ORDERED that the Clerk of the Court shall provide Plaintiff with the Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the $350 civil filing fee or complete and submit the attached Motion to Proceed IFP within that time, this action shall remain dismissed without prejudice and without further Order of the Court.

IT IS SO ORDERED.

DATED: January 30, 2008

MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT